

Chapter 9

THE CONSTITUTIONAL LEVEL OF ANALYSIS: A CHALLENGE

Theories, Living Realities, and Brute Facts

It should be evident to any reader that the essays written by Alexander Hamilton, John Jay, and James Madison and published as The Federalist addressed the constitutional level of analysis. They analyzed and explained the provisions contained in a specific document: the Constitution of the United States. In conducting that analysis, and offering that explanation, the authors of The Federalist drew upon a general theory of limited constitutions. This is the intellectual apparatus that I call the political theory of a compound republic. That theory was used to conceptualize the design of the U.S. Constitution, to conduct the analysis, and to offer the explanations expounded in The Federalist. That theory might be used to formulate the design and to conjecture about the expected performance of constitutional arrangements for still other units of government and collective decision-making arrangements. The theory is as relevant to the contemporary world as it was to the world of 1787.¹

Before one can begin to appreciate the significance of the political theory of a compound republic, any scholar or analyst must make a much more extended inquiry about the constitutional level of analysis. In my own inquiry, I have found Thomas Hobbes's analysis in Leviathan and De Cive to be especially helpful. He establishes the foundations for the constitutional level of analysis with great care. Hobbes's own political theory leads him to expound a unitary theory of sovereignty as the only way to constitute government in a commonwealth. Hobbes's theory of sovereignty is the antithesis of a general theory of limited constitutions. One does not have to agree with his prescriptions to acknowledge the importance of his work for analysis conducted at a constitutional level.

Montesquieu's The Spirit of the Laws is also helpful in clarifying constitutional foundations. Montesquieu's work enabled me to understand how one could take Hobbes's account of democracy in De Cive, add to it the concept of a constitution (the rules that apply to the conduct of an assembly), have recourse to a compound system of republics, and thereby transform a theory of sovereignty into a theory for the governance of a democratic society. Hobbes's concept of democracy, so transformed, meets Madison's condition for basing "all our political experiments on the capacity of mankind for self-government." Rousseau poses important puzzles and one might conceive his general will as the shared common understanding that applies to the constitutional level of analysis. Locke added important calculations in thinking about the differentiation of governmental authority with reference to legislative and executive powers. David Hume adds great depth to the problem of normative inquiry at the constitutional level of analysis as does Adam Smith in

The Theory of Moral Sentiments

There are others whose work is acclaimed in other contexts, but is seriously deficient at the constitutional level of analysis. Jeremy Bentham, in moving to a summary concept of utility, made important contributions to modern economic analysis; but the concept of utility has greatly impoverished constitutional inquiry. Summarizing all values on a single scale called "utility" sweeps aside considerations of mutual respect, justice, and liberty which are basic to constitutional analysis. John Austin's analysis of the place of constitutional law as positive morality rather than positive law enables one to appreciate the intellectual achievement attained in The Federalist and Austin's failure to understand that achievement. Hegel and Marx offered alternative explanations for human social and cultural evolution which render constitutional choice largely irrelevant. Lenin, on the other hand, develops a theory of revolution in What Is To Be Done? that brings one back to the equivalent of Hobbes's theory of sovereignty for fashioning the leadership for a revolutionary movement. In State and Revolution, Lenin follows Marx in anticipating the withering away of the state; but his revolutionary party becomes the new sovereign in the Soviet state, as Hobbes would have anticipated. We have as much to learn from failures as from successes in addressing the constitutional level of analysis; but we do need to know how to address that level of analysis.

Political analysts in the nineteenth century were preoccupied with the "living realities," not with the design and formulation of experiments in constitutional choice. Walter Bagehot, in The English Constitution first published in 1867, describes his effort as portraying "living reality" in contrast to "paper descriptions." Constitutional formulations were associated with "paper descriptions." Bagehot, Wilson, and others in that tradition never confronted the irony that they too put words on paper and, thus, rendered paper descriptions. Generations of legal and political analysts, who became known as "realists," were inspired by Bagehot's efforts to come to terms with "living realities" rather than "paper descriptions."

In his efforts to represent the living reality of the English constitution, Bagehot viewed the task of the analyst as breaking through the facade of the dignified parts to describe the efficient parts of a constitution. The cabinet was the efficient core of the English system. It tied the working parts together into a single unitary whole. Anomalies arise in his analysis because Bagehot, also, viewed human governance as based upon methods of discussion (Cf. Bagehot, 1908). He, thus, retained a fundamental concern for basic criteria at the constitutional level of analysis. Due process of government, viewed from a constitutional perspective, is one that enables discussions to occur where contestable arguments can be advanced to inform deliberations about governmental policies.

A careful reading of Bagehot reveals a concern for checks and balances that facilitate a proper order of debate and deliberation. In the introduction to the second edition published in 1872, Bagehot anticipated that the voice of the people can become the voice of the

devil under the perverse circumstances where ignorant masses are manipulated by political demagogues and wirepullers. Checks become necessary to rationality in order to provide a structure that enables each participant in a political process to listen to "the reasons of others," to compare "them quietly with one's own reasons," and then to be "guided by the result" (Bagehot, 1964: 297). Such processes can be preempted and destroyed when Parliamentary deliberations come to be dominated by demagogues and wirepullers. The extension of voting to ignorant masses by the Reform Act of 1867 meant that the public theater afforded by the dignified parts of the constitutions were no longer there to shield the quality of discussion that informed the efficient parts of the constitution. Demagogues and wirepullers appealing to ignorant voters could be expected to transform Parliament into a new form of public theater.

Woodrow Wilson's efforts to reveal living reality were inspired by Bagehot without being troubled by the possibility of Vox populi becoming Vox diaboli. Wilson saw his task of portraying the living reality of the American constitution as one where an observer would:

. . . escape from theory and attach himself to facts, not allowing himself to be confused by a knowledge of what that government was intended to be, or led away into conjectures as to what it may one day become, but striving to catch its present phases and to photograph the delicate organism in all its characteristic parts exactly as it is today; an undertaking all the more arduous and doubtful of issue because it has to be entered into without guidance from writers of acknowledged authority (Wilson, 1956: 30).

This conception of a political observer's task suggests a calculated effort to turn one's back upon the cumulative efforts of others to inquire about the nature and constitution of order in human societies. Instead, the observer is represented as painting word pictures about institutions of government as living realities. Considerations of what government were "intended to be" or what they "may one day become" were to be set aside as theoretical conjectures. We must instead rely upon human vision as though one could see everything in pristine clarity without a conceptual apparatus to suggest what to look for, how to discern potential difficulties, and how to evaluate performance.

We do not "see" the conceptual apparatus that enables us to make sense of the world when attempting to portray living realities. The logic of any artifactual creation is to be understood in large part by what it was intended to be. Conjectures about what it "may one day become" provide grounds for testing how design characteristics can be expected to affect conduct and performance. Wilson's rejection of theory ran the risk of dismissing the prior accumulation of knowledge as irrelevant, without trying to sort out and distinguish the merit of different efforts to think about the governance of human societies. Thus, we observe sweeping tendencies to reject "all niceties of constitutional restriction" and "broad principles of constitutional limitation." These had, presumably, been swept aside or overridden by

"a thoroughly organized system of congressional control." The "facts," then, gave "a very rude negative to some theories of balance and some schemes of distributed power" (Wilson, 1956: 31).

Wilson's conclusion, that a thoroughly organized system of Congressional government dominated the living reality of American politics, poses a deep puzzle in light of Hobbes's analysis of democracy in De Cive. Hobbes argues that there are essential conditions which frame a democracy. Exigencies may arise in a democratic society where the extraordinary prerogatives of government are assigned to particular officials who act as agents on behalf of the people who govern in assembly. A possibility always exists that those agents may usurp authority and assume the full prerogatives of government. If they do so, and a people acquiesces in such a usurpation of authority, Hobbes asserts that the "death" of democracy has occurred. Was Wilson's vision of Congressional government a preliminary manifestation of pathologies that might eventuate in the death of democracy? Might "Presidential government" be the terminal stage in that process?

The essential condition for the survival of democracy in Hobbes's analysis is that the people maintain limits with respect to the exercise of governmental authority. If constitutions specify the terms and conditions of government, then "constitutional restrictions" and "broad principles of constitutional limitations" are of fundamental importance. The failure to maintain limits will mark the death of democracy.

A system of popular or democratic government can be maintained so long as people continue to exercise the basic prerogatives of constitutional choice and hold those who exercise governmental prerogatives accountable to constitutional limits and standards of performance inherent in a general theory of limited constitutions. This is the appropriate foundation for civic education and for critical discussions about the living reality in any system of democratic government. The proper discharge of the prerogatives of citizenship and of public office can be judged only with reference to the constitutional level of analysis.

Conjectures about discrepancies between "living realities" and constitutional formalities have an important place in a constitutional level of analysis. When the working parts in a system of governance fail to perform as intended, we have reason to believe that design concepts may have been inadequate. Problems of institutional weakness or institutional failure may exist. The rise of machine politics and boss rule in the nineteenth century did pose a fundamental challenge to constitutional government in the United States. Tocqueville had assessed the possibility that such a development might occur in his chapter on the unlimited power of the majority. Moisei Ostrogorski, in the second volume of his Democracy and the Organization of Political Parties, goes a long way in helping us to understand the constitutional character of political parties in governmental processes. A great deal can be learned about processes of coalition formation and the function of political parties in light of both

American and European efforts to maintain party rivalry as a way of exploring alternative possibilities without falling victims to boss rule. Those problems need to be understood at a constitutional level of analysis.

The critique of the legal and political realists strongly emphasized that constitutional provisions can become mere formalities without much bearing upon what happens in the workings of government. This difficulty was well recognized by both Hamilton and Madison. Mere words on paper do not become operable in human conduct. Parchment barriers to the usurpation of authority are never sufficient. The problem is how to build structures and processes of governance so that individuals as actors are led to give force and effect to words on paper in ordering their relationships to one another. But, a critical consciousness of what was intended and what possibilities might occur are necessary to maintain the integrity of any set of rule-ordered relationships. If words were self-formulating, self-applying, and self-enforcing, we might conceive of a word-ordered universe where governments were unnecessary. Giving effect to words on paper is a general problem which applies to all rules as word-ordered relationships and is not confined to constitutions.

If we dismiss constitutions as words on paper without meaningful significance, the same problem can apply to the enactments of legislatures. Legislatures, too, can put words on paper that have no particular significance for ordering relationships in human societies. Under such circumstances, legislatures, including Congress, can become the ceremonial facade of government. Responsibility for formulating rules and regulations may be passed along to someone else, such as subordinate officials in the bureaucracy. Rules and regulations sprout everywhere. Any pretense of maintaining a rule of law can be abandoned. Laws can instead become little more than occasional traps for money when bribe bargains become the price for getting one's own way. Everyone can end up bribing everyone else. Tragedies arise when conditions of scarcity impose constraints. Many wind up being oppressed and exploited by others; and few have incentives to do more than is minimally necessary to meet the exigencies of life.

Efforts to describe the "living reality" of government often take on the characteristic of describing machines without seeing what they do. The machine works, but we do not see its effects upon the conditions of life in society. Some of the descriptions of the more confined machinery of local government were accompanied by portraits of corruption as perverse relationships between officials and others in the community. Such studies were called muckraking. Outside the context of local communities, efforts to portray the living reality of government were usually devoid of such links to the living reality that occurred in the lives of ordinary people. An image of what was missing is indicated by Harold Lasswell's title of a book, Politics: Who Gets What, When, How. If only we could see connections between the machinery of government as a living reality and who gets what, when, and how, we might come to a better understanding of government as a living reality. There would then be a link between "government" and something else.

While Lasswell proposed to take the "working attitude of practicing politicians" (Lasswell, 1958: 7) as the basis for his study, he was never able to present a portrait of politics as a living reality. The institutions of the national government were presumed to be a supergame. A stratum of population characterized as "elites" were presumed to be players in that supergame. Lasswell's Politics, however, is not a portrait of a living reality that enables one to see who gets what, when, and how. Rather, it indicates the means used and the results achieved in a topical presentation devoid of the living reality that occurs in the play of the game of politics.

Anyone who has witnessed a game of football will appreciate the great difficulty of rendering an effective portrait of that "living reality" in all its phases and characteristic parts. An effort to portray the living reality of a system of governance and its operation in a society, without a knowledge of what is intended and conjectures about what may occur, exceeds the limits of human cognition. John Searle, a contemporary scholar in the philosophy of language, indicates how we understand the facts of games as living realities. We can understand those living realities only if we have an implicit understanding of how rules are "constitutive" of social facts as "institutional" facts (Searle, 1969: 51). The living reality of a football game becomes comprehensible only as we understand the rules of the game, see features of intentionality as represented by what the game was intended to be, in light of conjectures about what types of play may occur.

Searle argues that the living reality of human institutions can never be understood as "brute facts." To illustrate his point, Searle suggests that a group of highly trained scientific observers be asked to formulate the basic scientific law that could be used to describe the game of American football. He suggests that these scientific observers might discover a "law of periodic clustering." Searle states the law of periodic clustering in the following way:

. . . at statistically regular intervals, organisms in like colored shirts cluster together in a roughly circular fashion (the huddle). Furthermore, at equally regular intervals, circular clustering is followed by linear clustering (the teams line up for the play) and linear clustering is followed by the phenomenon of linear interpenetration (Searle, 1969: 52. Searle's parenthetical observations.).

Having discovered the law of periodic clustering, our scientific observers, presumably, have provided us with a scientific understanding of the living reality represented by the game of football.

Our response to Searle's conjecture is to be struck by its absurdity. The irony is that Searle's conjecture is no more absurd than suggesting that anyone who wants to understand the living reality of politics should "escape from theory and attach himself to facts, not allowing himself to be confused by a knowledge of what government

was intended to be, or led away with conjectures as to what it may one day become. . ." (Wilson, 1956: 31). When this happens, observers cut themselves off from essential considerations that might enable them to understand the point of the game, the range of strategies appropriate to a fair game, and what constitutes foul play.

We can understand the structures and processes of government, or other aspects of human social reality, only as institutional facts. Institutional facts exist because rules are constitutive of human social relationships. We understand the games of life by the way that they are constituted with reference to rules and standards of propriety and fairness. Rules assign both capabilities and limitations in the actions that can be taken. We understand rules and the meaning of rule-ordered relationships with reference to what was intended to be and in light of conjectures about what may occur.

If people intend to create a system of government, where those who exercise special prerogatives of government including rule-making, rule-enforcing, and judging-the-application-of-rules are themselves subject to enforceable rules of constitutional law, it is absurd to ignore constitutional restrictions and principles of constitutional limitations in playing the game that we call democracy. People who play that game need to be especially cognizant of conjectures about what may occur if some players pursue strategies to rig the game by dominating the choices of officials and judges. A fair game cannot be maintained without careful attention to particular restrictions and to principles for formulating essential limitations.

When people in a democratic society consider rules that establish the terms and conditions of government as mere words on paper, they are in deep trouble. Rules may need to be revised; but revisions need to be made in light of some fundamental criteria for what is required to maintain the basic integrity of a game that we call democracy. There may be counterintuitive circumstances, such as the oligarchical tendencies that arise in all deliberative assemblies, which require special safeguards. In such circumstances, people may find themselves trapped by preemptive moves where a few players learn how to set the agenda and dominate the play of the game. All of these contingencies require cautious regard for rules that establish appropriate restrictions. The integrity of a fair game cannot be maintained without an awareness of basic principles of constitutional limitations. When human beings abandon the possibility of creating and maintaining a system of enforceable rules that apply to the conduct of government, they put themselves at the disposal of those who govern. This has been the fate of most people through the course of human history. The rule-ruler-ruled relationship has usually been a simple dominance relationship where some — rulers — dominate and exploit others — their subjects.

Coping with Brute Facts and Brute Empiricism

Efforts to understand American politics as a living reality has generated an intellectual odyssey of almost unbelievable proportions.

Much of my life has been involved in that odyssey. My account is, ironically, my effort to understand that odyssey as a living reality. My conjectures should be treated as contestable. My reference is to an explicit literature and historical experience which anyone else can study and interpret independently of what I have to say. We can understand what occurred only in light of inquiry informed by conjectures about the meaning of that experience.

I regard Harold Lasswell as one of the intellectual giants in American political science during the twentieth century. His Politics: Who Gets What, When, How was a serious effort to understand politics as a supergame. Instead of resting there, Lasswell found it necessary to go back to fundamentals and begin to build a theoretical framework for political inquiry. By fundamentals, I mean to basic elements and relationships represented by such terms as actors, acts, environment, response, symbol, identification, and personality. Lasswell built a technical language for disciplined inquiry and discourse about the complex structures and processes that occur in political reality. These efforts are expounded in Power and Society, co-authored with Abraham Kaplan, a distinguished philosopher. Power and Society had an important role in my own intellectual development. I mastered the language and transformational logic expounded by Lasswell and Kaplan. I worked with colleagues who had also learned that language. Errors were challenged and differences clarified so that we knew what we were saying to one another. This was probably the most fundamental step I took in becoming a political scientist.

We need to discipline our use of language if we are to know what we hear and what we say when we talk to one another. Too much of the ordinary language of political discourse is filled with words that can mean anything, everything, and nothing. We talk to one another, but we do not communicate with one another. Human communication depends upon having a shared community of understanding about what words mean. Mere words as such do not have meaning. Some of our conversations are no more meaningful than what we would regard as nonsense in a conversation on the part of primitive people who were always talking about this or that spirit. I know of no one who has seen "the" government.² Bagehot trapped himself into believing that he could use words to portray a "living reality" that could be contrasted to "paper descriptions" while offering no more than a paper description himself. Wilson and other legal and political realists caught themselves in this same trap.

In the course of time, I went on to learn the basic language and transformational logic used by economists, especially as that language and logic was applied to the study of collective choice, including its application to constitutional choice as expounded by James Buchanan and Gordon Tullock in The Calculus of Consent. Having learned Lasswellese and Economese, I acquired some rudimentary skill in unravelling the language and computational logic inherent in the work of other political theorists, as I have attempted to do in this book. Other thinkers, including Thomas Hobbes, had developed frameworks for political inquiry that have strong parallels to the efforts of Lasswell and Kaplan. Once one comes to appreciate the intellectual

apparatus that scholars use as their frameworks for political inquiry, it also becomes possible to read descriptive studies with an awareness of how words are used, not in standard English but in a technical language with its own computational logic. The English language is rich enough in its miscellaneous terms and definitions that it can be used to articulate many different technical languages with specialized terminologies and logics. I have found the work of Tocqueville, both in Democracy in America and The Old Regime and the French Revolution, to be especially important when read this way. Tocqueville thoroughly understood the political theory of a compound republic and the basic logics that apply to other types of political regimes.³

These intellectual efforts on my part presented me with a strange puzzle. I accepted the basic contention in Lasswell and Kaplan that a theoretical framework was necessary to empirical inquiry. I accepted their argument that "brute empiricism" was an unsatisfactory way to proceed with political inquiry. However, I was presented with the anomaly that Lasswell and Kaplan pointed to Tocqueville as coming dangerously close to "brute empiricism" in his descriptive studies. "Brute empiricism" consisted of "the gathering of 'facts' without a corresponding elaboration of hypotheses" (Lasswell and Kaplan, 1950: x). I had come to see Tocqueville's work as carefully informed by a theoretical framework; Lasswell and Kaplan saw it as dangerously close to brute empiricism.

In the author's introduction to Democracy in America, Tocqueville poses a basic issue in political theory: Can human beings aspire to increasing equality in human societies without great risk to aspirations for freedom? Hobbes would have recognized that the liberty of subjects is constrained by the requirements of sovereignty. Sovereignty meant, in Hobbes's formulation, that those who rule are the source of law, and, as such, are above the law, and cannot be held accountable to law. The general theory of limited constitutions meant, by contrast, that the terms and conditions of government can be specified as fundamental law and systems of government constituted where all authority is subject to limits and no one exercises unlimited authority.

In the concluding paragraph to Chapter 1, on the geography of North America, Tocqueville indicates to the reader that:

In that land the great experiment to construct society upon a new basis was to be made by civilized man; and it is there, for the first time, that theories hitherto unknown, or deemed impracticable, were to exhibit a spectacle for which the world had not been prepared by the history of the past (Tocqueville, 1945: 25).

Tocqueville was suggesting that an intellectual development of Copernican proportions had occurred and that the "theories hitherto unknown or deemed impracticable" had been used to conduct a "great experiment." That experiment exhibited "a spectacle for which the world had not been prepared by the history of the past." Great societies in the history of the past had all been constituted as

empires. A general theory of limited constitutions had enabled a people on the North American continent to reiterate principles of democratic self-government to reach from the little traditions of townships to a great society of continental proportions. Was this an introduction to a political narrative grounded in brute empiricism?

In a brief chapter on "The Sovereignty of the People of America," Tocqueville expounded the basic principle used in organizing that "great experiment." Sovereignty was conceived as "the right of making laws" (Tocqueville, 1945: 123) in contrast to the way that Hobbes conceptualized sovereignty. Constitutions are fundamental laws. People who exercise the basic prerogatives of constitutional choice formulate the fundamental laws that apply to the conduct of governments.

In concluding that chapter, Tocqueville indicates the relevance of these circumstances. "In some countries," he observes "a power exists which, though it is in a degree foreign to the social body, directs it and forces it to pursue a certain track" (Tocqueville, 1945: 57). In those countries, it would be appropriate to speak of states which rule over societies. "In others," Tocqueville continues, "the ruling force is divided, being partly within and partly without the ranks of the people." In such circumstances, we might speak of the powers of government being shared by a "king-in-parliament" with aspects of local self-government. To this, Tocqueville contrasts the American situation: "But nothing of the kind is to be seen in the United States, there society governs itself for itself" (Tocqueville, 1945: 57). A system of governance existed where a society had become self-governing and did not depend upon a state to rule over society.

Such a possibility was of revolutionary importance in a world where great societies had existed only as empires. Liberty had existed among the petty warring city republics of Greece, and in other self-governing city republics; but no great society of continental proportions had existed as a compound system of self-governing republics. The closest approximations were two confederations: the United Provinces and Switzerland. France, in Tocqueville's lifetime and that of his father, was first an absolute monarchy, a constitutional monarchy, a republic, then an empire, a restored monarchy, a second empire, a second republic, and a restored empire, if I have the succession correct.

In his concluding assessment of the institutions of governance in American democracy, Tocqueville identifies the key institutions, contributing most to self-governing capabilities, as: (1) the federal form of government, (2) township institutions, and (3) the constitution of the judiciary. More important than these institutional arrangements, however, were the habits of the heart and mind of the American people because individuals are first their own governors in democratic republics and because it is the shared common understanding based upon habits of the heart and mind which citizens use to formulate fundamental law and hold officials to account for performing in accordance with fundamental law.

There are, however, dangers that this shared understanding might erode if people "fall to denying what they cannot understand" (Tocqueville, 1945: II, 4), neglect the importance of the utility of form and the science of association upon which an appreciation for the utility of form is based, and act upon natural inclinations stimulated by anxiety and envy. In those circumstances, democratic societies can be expected to give way to increasing centralization of authority and the abandonment of self-governing capabilities. Tocqueville, in his analysis, gives relatively little attention to Congress. The federal system, townships, religion, the judiciary, voluntary associations, and the press occupy places of more fundamental importance in the governance of American society.

We are now confronted with the circumstance that visions of the "living reality" adopted by the legal and political realists overwhelmingly involve a search for some single ultimate center of self-sufficient authority to direct the machinery of government and to rule over society. Wilson initially saw Congress as that supreme authority in a system of Congressional government. But he later saw the "new leadership of the Executive" as promising to "substitute statesmanship for government by mass meeting" (Wilson, 1956: 23). Presidential government had promise of being an alternative to Congressional government. Others have had visions of Judicial Supremacy where a Supreme Court was the ultimate authority which had the last say.

A basic proposition, characteristically asserted as a self-evident truth by these same realists, is that "the more power is divided the more irresponsible it becomes" (Wilson, 1956: 77). The logical correlary is: the more power is unified the more responsible it becomes. At this point we can contrast this presupposition with the basic conceptualization in Hobbes's theory of sovereignty: a sovereign, as the ultimate source of law, is above the law, and cannot be held accountable to law. Those who exercise ultimate authority and have the last say are not legally and politically responsible to other human beings. They are, in some fundamental way, outlaws (outside the reach of law) in relation to the rest of society. Persons, who occupy such positions, are the ultimate judges of their own interests in relation to the interests of others. This violates a basic precept of justice that "no one is a fit judge of his or her own cause in relation to the interest of others."

Those who presume to see systems of government as "living realities," without the benefit of an explicit analytical language to serve as an intellectual tool for enquiring about that "reality," commit an added error of assuming the existence of self-evident truths. What appears to be intuitively obvious may not be true. As I indicated in Chapter 8, it is intuitively obvious to me that the sun rises in the east, moves across the sky, sets in the west, and rotates around the earth each day. I have come to appreciate that my intuitive perception of earthly and heavenly realities is false. There is a better way of conceptualizing that reality. That alternative conceptualization is counterintuitive, requires a more complex explanation, and offers a better understanding of earthly and

heavenly events. We cannot build a political science upon intuitively obvious, common-sense observations of human institutions as "living realities." There are many counterintuitive and counterintentional contingencies that need to be taken into account if a political science is to be a science of human institutions rather than paintings presented in words. Every counterintuitive or counterintentional contingency is a potential trap for the naive realist, who presumes to see the whole picture of living reality with its self-evident truths.

In such circumstances, those who escape from theory and attach themselves to facts in portraying the living reality of American government can be observed, like Wilson, making clean sweeps of "constitutional restrictions" and "broad principles of constitutional limitations" for a thoroughly organized system of central-government control. A "rude negative" is given to the American theory of constitutional government (Wilson, 1956: 31). When a logic of limited constitutions is abandoned as "literary theories" and "paper pictures" and correlative limits upon government are abandoned while making increasing demands upon "the" government to tend to all problems in life, we run the risk of also abandoning the conditions for maintaining a self-governing society. The death of democracy occurs when limits no longer apply to those who presume to exercise the prerogatives of government. We may have become a nation, to paraphrase Tocqueville, where freedom was not torn from our grasp by foreign conquerors, but where freedom was trampled under foot (Tocqueville, 1945: II, 47).

When we cut ourselves off from understanding the constitutive nature of rules in creating the institutional facts of life in human societies, we can leave ourselves, like Searle's scientific observers, casting around for scientific generalizations. Those who speculate about strategic implications of the game of politics view the whole point of the game as winning and reaping the fruits of victory. Pulling the wool over people's eyes, lying, and cheating are useful strategies if you get away with them. Elections, debate, and deliberation are aspects of a theater for creating public images that have no necessary connection to solving problems shared by communities of people and developing shared communities of understanding of what it means to live in a self-governing society.

This strange intellectual odyssey can be viewed as the plausible result of presupposing that human beings can somehow "see" human societies and systems of governance as "living realities." No human being can "see" that reality, much less paint word pictures which accurately portray that reality. We simply cannot see the whole picture of that living reality. To assume that we can see the whole picture is to create gross illusions about human capabilities. We fantasize; we deny what we cannot "see"; we trample under foot; and we acquiesce in the death of democracy. We praise greatness; we hail progress; but we fail to read the signs of decay in our own civilization.

The Conceptualization of Alternative Possibilities

An alternative to presuming that we can directly see human societies as living realities is to learn how to use the languages and computational logics that are appropriate to the study of human societies as rule-ordered relationships. The constitutional level of analysis is the foundation for building analytical capabilities. We use the logics of alternative possibilities to come to a basic understanding about how systems of governance work both in relation to what they were intended to be and in light of conjectures about what may one day occur. This is the method of competing hypotheses that stands at the foundation of the experimental sciences. We observe what occurs in relation to what was intended to be and come to a better understanding about the basic linkages that exist in human societies as aggregations of simultaneous and sequential games that work themselves out in continuities of space and time. We need to understand the concepts and the computational logics that inform experiments in constitutional choice. We can learn from the puzzles and difficulties that arise. But we can understand the meaning of particular experiments only in light of a more general understanding of the problems of governance in human societies and how human beings have coped with these problems through history.

It is also possible to use the intellectual apparatus afforded by the languages and computational logics appropriate to political inquiry to conjecture about the future — about what may one day occur, to paraphrase Wilson. In Democracy in America, Tocqueville closes the first volume with a conjecture that the United States and Russia, whose principles of collective action rely, respectively, upon freedom and obedience, will each come "to sway the destinies of half the globe" (Tocqueville, 1945: 434). Elsewhere he despaired that France could ever break the shackles of centralization (Tocqueville, 1959: 189-190).

Today I am led to conjecture that the United States, snared in a morass created by the increasing nationalization of American society, will be forced to draw back and explore ways to free itself from the central-governmental trap. I shall not be surprised if France frees itself from excessive centralization and moves forward at the forefront of European development. Spain will not be far behind. Italy, the home of the free cities that gave birth to the Enlightenment, may experience a new renaissance. In these circumstances, Germany will abandon its anxieties, generate new levels of achievement, and again turn outward in relating its own cultural achievements to the cultural achievements of other peoples. The British will continue to ponder about whether Parliament can reform itself.

Europe may again spark intellectual developments, create new configurations of institutional arrangements in the European community, and achieve material and cultural advances that carry human civilization far beyond present thresholds. We may again move forward toward a new era in human civilization where peoples learn to base

their political experiments upon the capacity of mankind for self-government. Acquiring that capacity depends upon learning how to use theoretical conjectures, reflections, and choice to conceptualize, conduct, and construe the meaning of diverse experiments in constitutional choice. In such a world, liberation theologies, if they are to contribute to human liberation, will have close intellectual and spiritual kinships to political theories of compound republics.

Footnotes

¹This does not imply that citizens in modern times or other lands would produce a document exactly like the U.S. Constitution if they were to use the political theory of a compound republic. The product of an application of a theory should not be confused with the underlying theory used in design. This would be like confusing the blueprints for the Brooklyn Bridge with the theory underlying the design of bridges. The same theories used by the designers of the Brooklyn Bridge can be used in other circumstances to conceptualize dramatically different blueprints. Nor does this statement imply that the theory used in 1787 was complete. Major increments have been added, including a better understanding of processes of coalition formation and the function of political parties, institutions of local government, systems of public administration, and international organization.

²John Dewey once observed:

The moment we utter the words 'The State' a score of intellectual ghosts rise to obscure our vision. Without our intention and without our notice, the notion of 'The State' draws us imperceptibly into a consideration of the logical relationship of various ideas to one another, and away from facts of human activity (Dewey, n.d.: 8-9).

Dewey's comment is interesting because he neglects the possibility that societies might be organized by reference to different theoretical conceptions. The logical relationships of various ideas to one another inherent in the concept of "the State" may not be appropriate to understanding the facts of human activities that are organized by the logical relationships of various ideas to one another inherent in a self-governing society. Dewey's effort to address the problem of governance in The Public and Its Problems was not well grounded in the general theory of limited constitutions used to design the American experiments in constitutional choice. He does come to some interesting generalizations in his efforts to generate hypotheses about the "facts of human activity" in that system of governance. He could have gone much further if he had built upon Tocqueville's conjectures about a "great experiment" on the North American continent and the way that experiment might be viewed as being based upon theories that were radically at variance with the theory of "the State."

³Different types of political regimes may require different logics in the same way that the design, construction, operation, maintenance, and repair of gasoline and electrical motors require recourse to different logics.